

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 691.

THE UNITED STATES OF AMERICA, PLAINTIFF IN  
ERROR,

vs.

A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R. RICKS.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF OKLAHOMA.

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## 1 THE UNITED STATES OF AMERICA:

*To A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks,  
Greeting:*

You are hereby cited and admonished to be and appear in the Supreme Court of the United States of America, in the city of Washington, District of Columbia, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Oklahoma, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said United States of America as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John H. Cotteral, judge of the District Court of the United States for the Western District of Oklahoma this 3rd day of January, A. D., 1921.

JOHN H. COTTERAL,

*Judge of the District Court of the United States  
for the Western District of Oklahoma.*

Due and proper service and the receipt of a copy of the within citation is hereby admitted and acknowledged this 4th day of January, A. D. 1921.

HENRY S. JOHNSTON,

*Attorney for J. R. Ricks Dept.*

SAM K. SULLIVAN,

*Attorneys for Defendants (Appellees).*

Filed Jan. 3, 1920. Arnold C. Dolde, Clerk. By M. V. Haws, deputy.

## 2 UNITED STATES OF AMERICA, ss:

*The President of the United States of America, to the honorable judges for the District Court of the United States for the Western District of Oklahoma, greeting:*

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the special November term, 1920, thereof, between United States of America, plaintiff, v. A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks, defendants, No. 2034, criminal, a manifest error hath happened to the great damage of the said United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, and then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, Washington, Dist. of Columbia, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, D. C., and filed in the

office of the clerk of the Supreme Court of the United States in Washington, Dist. of Columbia, on or before the 2nd day of February, 1921, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 3rd day of January, in the year of our Lord one thousand nine hundred twenty-one.

Issued at office in Oklahoma City, Oklahoma, with the seal of the District Court of the United States for the Western District of Oklahoma and dated as aforesaid.

[SEAL.]

ARNOLD C. DOLDE,  
*Clerk of the District Court of the United States,  
Western District of Oklahoma.*

Allowed by—

JOHN H. COTTERAL, *Judge.*

UNITED STATES OF AMERICA,

*Western District of Oklahoma, ss:*

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the District Court of the United States for the Western District of Oklahoma.

[SEAL.]

ARNOLD C. DOLDE,  
*Clerk of the District Court of the United States,  
Western District of Oklahoma.*

Filed Jan. 3, 1920. Arnold C. Dolde, clerk. By M. V. Haws, deputy.

3 In the District Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,

*vs.*

A. Z. HUTTO, J. R. WHITE, RAY SEE, AND  
J. R. Ricks, defendants.

} No. 2034. Criminal.

INDICTMENT FOR CONSPIRACY TO VIOLATE SECTION 2078, REVISED STATUTES, IN VIOLATION OF SECTION 37 OF THE FEDERAL PENAL CODE.

At a special term of the District Court of the United States for the Western District of Oklahoma, begun and held at the city of Oklahoma City in said district on the fifteenth day of September, in the year of our Lord one thousand nine hundred nineteen, the grand jurors of the United States of America, within and for said district,

having been duly summoned, empaneled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America, committed within said district, in said State of Oklahoma, upon their oaths aforesaid, in the name and by the authority of the United States of America, do find and present:

4 That heretofore, to wit, on or about the first day of September, in the year of our Lord one thousand nine hundred seventeen, under and by virtue of an act of Congress approved April thirtieth, in the year of our Lord one thousand nine hundred eight, defendant A. Z. Hutto was appointed by the Commissioner of Indian Affairs, Indian farmer for the Tonkawa Tribe of Indians, Ponca Reservation, in Oklahoma, and on said date duly qualified as such Indian farmer, and continued to act as such Indian farmer from and after said date up until some time during the month of April, nineteen hundred nineteen.

That in pursuance of said act of Congress approved May 30th, 1908, the Secretary of the Interior issued, promulgated and published rules and regulations covering the duties of Indian farmers; that under and by virtue of said act of Congress and said rules and regulations, it thereby became and was the duty of said Indian farmer to superintendent and direct farming and stock raising among the said Tonkawa Tribe of Indians, Ponca Reservation, in Oklahoma, and to supervise the leasing of Indian lands, and to appraise their value for sale, and to make such reports as required by the Commissioner of Indian Affairs, the Secretary of the Interior, and the superintendent of the said Ponca Reservation.

That heretofore, to wit, continuously and at all times throughout the period of time extending from the first day of September, nineteen hundred seventeen, to on or about the fifteenth day of April, nineteen hundred nineteen, at and within the county of Kay, State of Oklahoma, in the western district thereof, A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks, whose more full, true, and correct names are to the grand jurors unknown, then and there being, did then and there wilfully, knowingly, unlawfully, and feloniously conspire, confederate, combine, and agree together and with each other and with divers other persons to the grand jurors unknown, that

5 the said A. Z. Hutto, while so employed in Indian affairs, should have an interest and concern in certain trades with the Indians, which certain trades with the Indians were not for or on account of the United States, in violation of section 2078, Revised Statutes of the United States, that is to say, that the said A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks, did then and there wilfully, knowingly, unlawfully, and feloniously combine, confederate and agree together and with each other and with divers other persons to the grand jurors unknown, that the said A. Z. Hutto, while so employed as Indian farmer, should have an interest and concern in sales of land by Indians of said tribe, and in the purchas-

ing of automobiles and other commodities by said Indians, and that as part and parcel of said conspiracy, the said A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks, well knowing all of the premises aforesaid, did then and there knowingly, wilfully, unlawfully, and feloniously conspire, combine, confederate and agree together and with each other and with divers other persons to the grand jurors unknown, that they would and should persuade, induce, procure, and cause certain Indians, members of said Tonkawa Tribe of Indians in Oklahoma, to wit, Railroad Cisco, Robert Tah, David Williams, and Joe Marcus Jessie, and divers other Indians, members of the Tonkawa Tribe of Indians in Oklahoma, whose names are to the grand jurors unknown, to sell their lands, purchase automobiles and other commodities, to borrow money and lend money, and that the said A. Z. Hutto should have an interest and profit in said sales, purchases, and loans.

*Overt acts.*

(1) And the grand jurors aforesaid, upon their oaths aforesaid, and in the name and by the authority of the United States of America, do further find and present:

That in pursuance of said unlawful conspiracy, combination and confederation aforesaid, and to effect the object of the same, and while the same was still in existence, and in pursuance of the  
6 execution thereof, the said A. Z. Hutto, Ray See, and J. R.

White did, in said county of Kay, State of Oklahoma and in the Western District thereof, on or about the 12th day of February, A. D. 1919, solicit and induce the said David Williams, a Tonkawa Indian and a member of said Tonkawa Tribe of Indians in Oklahoma, to sell and convey the following described tract of land, to wit:

Lots 3 and 4 of the northwest quarter, and the south half of the northwest quarter of section 1, township 25 north, range 1 west, in Kay County, Oklahoma, the same being the property of, and belonging to the said David Williams, to the said J. R. White, for the inadequate consideration of three thousand seven hundred fifty (\$3,750.00) dollars; and in pursuance further of said unlawful conspiracy, combination, confederation and agreement aforesaid, and to effect the object of the same, and while the same was still in existence, and in pursuance of the execution thereof, the said J. R. White and Ray See did, in said county of Kay, State of Oklahoma, in said district, on or about the said twelfth day of February, 1919, pay to said A. Z. Hutto, a portion of said consideration paid for said land, to wit, the sum of two hundred fifty (\$250.00) dollars, for his services in procuring the consent of the said David Williams to the said sale of said land;

(2) And the grand jurors aforesaid, upon their oaths aforesaid, and in the name and by the authority of the United States of America, do further find and present:

That in pursuance of said unlawful conspiracy, combination, confederation and agreement as aforesaid, and to effect the object of

the same, and while the same was still in existence, and in pursuance of the execution thereof, the said A. Z. Hutto and J. R. Ricks did, in said county of Kay and State of Oklahoma, and in the Western District thereof, on or about the twelfth day of August, in the year of our Lord one thousand nine hundred eighteen, solicit and induce the said Joe Marcus Jessie, a Tonkawa Indian and a member of said Tonkawa Tribe of Indians in Oklahoma, to sell and convey the following described tract of land, to wit:

The east half of the southwest quarter, and the southwest quarter of the southwest quarter, of section 14, township 25 north, range 1 west, in Kay County, Oklahoma, the same being the property of, and belonging to the said Joe Marcus Jessie, to the said J. R. Ricks, for the inadequate consideration of eight thousand eight hundred (\$8,800.00) dollars; and in pursuance further of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, and while the same was still in existence, and in pursuance of the execution thereof, the said J. R. Ricks did, in said county of Kay, State of Oklahoma, in said district, on the said twelfth day of August, 1918, pay to said A. Z. Hutto, a portion of said consideration paid for said land, to wit, the sum of one hundred fifty (\$150.00) dollars, for his services in procuring the consent of the said Joe Marcus Jessie to the sale of said land;

(3) And the grand jurors aforesaid, upon their oaths aforesaid, and in the name and by the authority of the United States of America, do further find and present:

That in pursuance of said unlawful conspiracy, combination, confederation, and agreement as aforesaid, and to effect the object of the same, and while the same was still in existence, and in pursuance of the execution thereof, the said A. Z. Hutto and J. R. White did, in said county of Kay and State of Oklahoma, and in the Western District thereof, on or about the 1st day of April, in the year of our Lord one thousand nine hundred nineteen, solicit and induce the said Railroad Cisco, a Tonkawa Indian, and a member of said Tonkawa Tribe of Indians in Oklahoma, to mortgage and convey to J. R. White the following described tract of land, to wit:

The west one-half of the northeast quarter of section 11, and the west one-half of the southeast quarter of section 2, all in township 35 north, range 1 west, in Kay County, Oklahoma,

the same being the property of and belonging to the said Railroad Cisco, for the pretended consideration of \$1,000.00, and in pursuance further of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, and while the same was still in existence, and in pursuance of the execution thereof, the said J. R. White did, in said county of Kay, State of Oklahoma in said district, on the said first day of April, 1919, pay the said A. Z. Hutto a portion of said consideration, the exact amount of which is to the grand jurors un-



known, for his services in procuring the execution of the said mortgage by the said Railroad Cisco;

And the grand jurors aforesaid, upon their oaths aforesaid, and in the name and by the authority of the United States of America, do further find and present:

That in pursuance of said unlawful conspiracy, combination, confederation, and agreement as aforesaid, and to effect the object of the same, and while the same was still in existence, and in pursuance of the execution thereof, the said A. Z. Hutto and J. R. White did, in said county of Kay and State of Oklahoma, and in the Western District thereof, on or about the seventeenth day of April, in the year of our Lord one thousand nine hundred nineteen, solicit and induce the said Railroad Cisco, a Tonkawa Indian and a member of said Tonkawa Tribe of Indians in Oklahoma, to sell and convey by warranty deed, to one Thomas Sheets, the following described tract of land, to wit:

The west half of the northeast quarter of section 11, and the west half of the southeast quarter of section 2, all in township 25 north, range 1 west, in Kay County, Oklahoma, the same being the property of, and belonging to, the said Railroad Cisco, for the consideration of eleven thousand (\$11,000.00) dollars; and in pursuance further of said unlawful conspiracy, combination, confederation, and agreement aforesaid, and to effect the object of the same, and while the same was still in existence, and in pursuance of the execution thereof, the said J. R. White and Thomas

9 Sheets did, in said county of Kay, State of Oklahoma, in said district, on or about the said 17th day of April, 1919, pay to said A. Z. Hutto, a portion of said consideration paid for said land, to wit, the sum of one hundred fifty (\$150.00) dollars, for his services in procuring the consent of the said Railroad Cisco to the said sale of said land;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FRANK E. RANDELL,  
*Assistant United States Attorney.*

Witnesses:

L. P. McDANIEL,  
Mrs. SUSIE ALLEN,  
C. O. JOHNSON,  
LOUIS BULL,  
JOE MARCUS,  
JESSIE,  
DAVID WILLIAMS.

(Endorsed.) No. 2034. United States District Court, Western District of Oklahoma. The United States vs. A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks. Indictment for conspiracy to



violate section 2078, Revised Statutes, violation of section 37 of Federal Penal Code. A true bill. M. C. Main, foreman grand jury. Returned and filed in open court September 25, 1919. Arnold C. Dolde, clerk. Frank E. Ransdell, assistant U. S. attorney.

10 In the District Court of the United States for the Western District of the State of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,	} No. 2034.
vs.	
A. Z. HUTTO, DEFENDANT.	

DEMURRER.

Comes now the defendant for himself, separate and alone, and demurs to the indictment filed against him, and for grounds and cause thereof states:

1st. That said information does not substantially conform to the requirements of the statutes and laws of the United States.

2nd. That the facts charged and the allegations in said indictment are not sufficient to charge the commission of a public offense.

3rd. That the allegations and facts set out in said indictment are not sufficient to charge this defendant with a public offense.

4th. That the indictment is not direct and certain in regard to the particular offense therein sought to be charged.

5th. That the indictment is not direct and certain in regard to the particular offense intended to be therein charged against this defendant.

6th. That the indictment is not direct and certain in regard to the particulars, the facts, and the circumstances of the offense charged, although such facts, particulars, and circumstances are necessary to constitute a complete offense.

7th. That the acts alleged to constitute the offense set out in the indictment are not clearly and distinctly set forth in ordinary and concise language and in such manner as to enable a person of common understanding to know what is therein intended.

8th. That neither the act charged as constituting the offense set out in the indictment nor are the allegations in the indictment stated with that degree of certainty which would enable a court to pronounce judgment according to the right of the cause or to protect the defendant in bar of another prosecution or action thereupon nor upon some of the offenses included within the general charge.

JOHNSTON & ROBINSON,  
SAM K. SULLIVAN,  
*Attorneys for Defendant.*

(Endorsed:) Filed this 22nd day of Oct., 1919. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

11 In the District Court of the United States for the Western District of the State of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF, }  
vs. } No. 2034.  
J. R. WHITE, DEFENDANT. }

DEMURRER.

Comes now the defendant for himself, separate and alone, and demurs to the indictment filed against him, and for grounds and cause thereof states:

1st. That said information does not substantially conform to the requirements of the statutes and laws of the United States.

2nd. That the facts charged and the allegations in said indictment are not sufficient to charge the commission of a public offense.

3rd. That the allegations and facts set out in said indictment are not sufficient to charge this defendant with a public offense.

4th. That the indictment is not direct and certain in regard to the particular offense therein sought to be charged.

5th. That the indictment is not direct and certain in regard to the particular offense intended to be therein charged against this defendant.

6th. That the indictment is not direct and certain in regard to the particulars, the facts, and the circumstances of the offense charged, although such facts, particulars, and circumstances are necessary to constitute a complete offense.

7th. That the acts alleged to constitute the offense set out in the indictment are not clearly and distinctly set forth in ordinary and concise language and in such manner as to enable a person of common understanding to know what is therein intended.

8th. That neither the act charged as constituting the offense set out in the indictment nor are the allegations in the indictment stated with that degree of certainty which would enable a court to pronounce judgment according to the right of the cause or to protect the defendant in bar of another prosecution or action thereupon nor upon some of the offenses included within the general charge.

JOHNSTON & ROBINSON,  
SAM K. SULLIVAN,

*Attorneys for Defendant.*

(Endorsed:) Filed this 22nd day of Oct., 1919. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

12 In the District Court of the United States for the Western  
District of the State of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF, }  
vs. } No. 2034.  
RAY SEE, DEFENDANT. }

## DEMURRER.

Comes now the defendant for himself, separate and alone, and demurs to the indictment filed against him, and for grounds and cause thereof states:

1st. That said information does not substantially conform to the requirements of the statutes and laws of the United States.

2nd. That the facts charged and the allegations in said indictment are not sufficient to charge the commission of a public offense.

3rd. That the allegations and facts set out in said indictment are not sufficient to charge this defendant with a public offense.

4th. That the indictment is not direct and certain in regard to the particular offense therein sought to be charged.

5th. That the indictment is not direct and certain in regard to the particular offense intended to be therein charged against this defendant.

6th. That the indictment is not direct and certain in regard to the particulars, the facts, and the circumstances of the offense charged, although such facts, particulars, and circumstances are necessary to constitute a complete offense.

7th. That the acts alleged to constitute the offense set out in the indictment are not clearly and distinctly set forth in ordinary and concise language and in such manner as to enable a person of common understanding to know what is therein intended.

8th. That neither the act charged as constituting the offense set out in the indictment nor are the allegations in the indictment stated with that degree of certainty which would enable a court to pronounce judgment according to the right of the cause or to protect the defendant in bar of another prosecution or action thereupon nor upon some of the offenses included within the general charge.

JOHNSTON & ROBINSON,  
SAM K. SULLIVAN,  
*Attorneys for Defendant.*

(Endorsed:) Filed this 22nd day of Oct., 1919. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

13 In the District Court of the United States for the Western District of the State of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF, }  
vs. } No. 2034.  
J. R. RICKS, DEFENDANT.

## DEMURRER.

Comes now the defendant for himself, separate and alone, and demurs to the indictment filed against him, and for grounds and cause thereof states:

1st. That said information does not substantially conform to the requirements of the statutes and laws of the United States.

2nd. That the facts charged and the allegations in said indictment are not sufficient to charge the commission of a public offense.

3rd. That the allegations and facts set out in said indictment are not sufficient to charge this defendant with a public offense.

4th. That the indictment is not direct and certain in regard to the particular offense therein sought to be charged.

5th. That the indictment is not direct and certain in regard to the particular offense intended to be therein charged against this defendant.

6th. That the indictment is not direct and certain in regard to the particulars, the facts, and the circumstances of the offense charged, although such facts, particulars, and circumstances are necessary to constitute a complete offense.

7th. That the acts alleged to constitute the offense set out in the indictment are not clearly and distinctly set forth in ordinary and concise language and in such manner as to enable a person of common understanding to know what is therein intended.

8th. That neither the act charged as constituting the offense set out in the indictment nor are the allegations in the indictment stated with that degree of certainty which would enable a court to pronounce judgment according to the right of the cause or to protect the defendant in bar of another prosecution or action thereupon nor upon some of the offenses included within the general charge.

JOHNSTON & ROBINSON,  
SAM K. SULLIVAN,  
*Attorneys for Defendant.*

(Endorsed:) Filed this 22nd day of Oct., 1919. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

14 In the District Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,	}	No. 2034. Criminal.
<i>vs.</i>		
A. Z. HUTTO, J. R. WHITE, RAY SEE, AND		
J. R. Ricks, defendants.		

## ORDER AND JUDGMENT.

Now on this, the 3rd day of November, A. D. 1919, the above and foregoing entitled cause comes on to be heard, pursuant to assignments, before the Honorable John H. Cotteral, judge of said court, upon the separate demurrers of each of the defendants to the indictment, the defendants being present in person and by their attorneys, Henry S. Johnston and Sam K. Sullivan, and the United States being represented by Frank E. Ransdell, assistant United States attorney.

Thereupon, said demurrers are presented to the court and after argument of counsel, the court being fully advised in the premises, and upon due consideration thereof, it is ordered that said demurrers and each of them be, and the same are, sustained, on the following grounds:

That the indictment fails to state sufficient facts to charge any of the defendants with the commission of any crime against the laws of the United States, for the reason that it attempts to charge the defendants with a violation of section 37 of the Penal Code in conspiring to cause defendant, A. Z. Hutto, to violate section 2078, Revised Statutes of the United States, when the acts prohibited in said section 2078, Revised Statutes, are not a crime against the United States but are acts for which a penalty is provided, to be collected only by a civil action by the United States, and hence could not form the basis of a criminal conspiracy in violation of said section 37 of Penal Code.

15 It is further ordered that this cause be resubmitted to the next grand jury and that the defendants be held upon their present bonds;

To all of which ruling and order of the court the plaintiff, the United States of America, excepts.

JOHN H. COTTERAL,  
*Judge of the District Court of the United States  
for the Western District of Oklahoma.*

(Endorsed:) Filed Nov. 3, 1919. Arnold C. Dolde, clerk, by Frank T. McCoy, deputy.

16 In the District Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R.  
Ricks, defendants.

} No. 2034. Criminal.

MOTION FOR NEW TRIAL.

Comes now the plaintiff, the United States of America, by John A. Fain, United States attorney, and Frank E. Ransdell, assistant United States attorney, its attorney, and moves the court to set aside the order and judgment of the court sustaining each of the separate demurrers to the indictment and resubmitting the cause to the next grand jury for the following good and sufficient reasons which affect materially the substantial rights of the plaintiff, to wit:

First. That the order and judgment is contrary to law.

Second. The court erred in sustaining said demurrers on the ground—

That the indictment fails to state sufficient facts to charge any of the defendants with the commission of any crime against the laws of the United States, for the reason that it attempts to charge the defendants with a violation of section 37 of the Penal Code in conspiring to cause defendant, A. Z. Hutto, to violate section 2078, Revised Statutes of the United States, when the acts prohibited in said section 2078, Revised Statutes, is not a crime against the United States, but are acts for which a penalty is provided, to be collected only by a civil action by the United States, and hence could not form the basis of a criminal conspiracy, in violation of section 37 of Penal Code.

Third. And for the reason that the violation of section 2078, Revised Statutes of the United States, is an offense which may be prosecuted by indictment, and is a crime which may form the basis of a criminal conspiracy in violation of section 37 of the Penal Code.

FRANK E. RANSELL,

*Assistant United States Attorney,*

*Attorney for Plaintiff.*

(Endorsed:) Filed Nov. 17, 1919. Arnold C. Dolde, clerk, by Frank T. McCoy, deputy.

17 Thereafter, on the 29th day of November, 1919, the following proceedings were had in said cause by said court, the honorable John H. Cotteral, D. J., presiding, to wit:

THE UNITED STATES, PLAINTIFF,	} No. 2034. Crim.
<i>vs.</i>	
A. Z. HUTTO ET AL., DEFENDANTS.	

Now on this 29th day of November, 1919, the plaintiff appears by Frank E. Ransdell, Esq., assistant United States attorney, and the defendants by Sam K. Sullivan, Esq., and Henry S. Johnston, Esq., their attorneys. Thereupon the motion of the plaintiff to set aside the order heretofore made on the separate demurrers of the defendants to the indictment is presented to the court, and upon consideration thereof and the court being duly advised in the premises, it is ordered that said motion be and the same is sustained, the order heretofore entered vacated, and the said demurrers and bonds of the defendants are reinstated; to which order and ruling of the court the defendants except.

18 In the District Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,	} No. 2034. Criminal.
<i>vs.</i>	
A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R. Ricks, defendants.	

#### ORDER ON DEMURRER TO INDICTMENT.

On this seventh day of December, 1920, the separate demurrers to the indictment herein are reargued and submitted, and the court being fully advised, it is

Ordered, that said demurrers be, and they are, sustained, upon the ground that section 2078 of the Revised Statutes is held inapplicable to transactions involving lands or other property with respect to which the Government has no interest or control, and no such interest or control is alleged in the indictment.

It is therefore ordered and adjudged that said defendants be, and they are discharged, herein and go hence without delay.

To which order and judgment and each of them the plaintiff excepts, and said exceptions are duly allowed.

JOHN H. COTTERAL,  
*District Judge.*

(Endorsed:) Filed Dec. 7, 1920. Arnold C. Dolde, clerk.



19 In the District Court of the United States for the Western District of Oklahoma.

PETITION FOR WRIT OF ERROR.

UNITED STATES OF AMERICA, PLAINTIFF, plaintiff in error, v. A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R. Ricks, defendants.	}	No. 2034.
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Now comes the United States of America, by its attorneys, Herbert M. Peck, United States district attorney for the Western District of Oklahoma, and Frank E. Ransdell, assistant United States attorney for the Western District of Oklahoma, and complains that in the record and proceedings had in this cause and in the judgment sustaining the defendants' separate demurrers to the indictment found herein against said A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks, on September 25, 1919, and dismissing said indictment, manifest error hath happened, as will appear in the assignment of errors herewith submitted.

Wherefore the United States of America prays for the allowance of a writ of error and for such other orders and processes as may cause the same to be corrected by the Supreme Court of the United States.

Dated this 3rd day of January, 1921.

HERBERT M. PECK,  
*United States Attorney for the Western District of Oklahoma,*  
FRANK E. RANDELL,  
*Assistant United States Attorney for the*  
*Western District of Oklahoma,*  
*Attorneys for Petitioner.*

(Endorsed:) Filed Jan. 3, 1921. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

20 In the District Court of the United States for the Western District of Oklahoma.

ASSIGNMENT OF ERRORS.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF in error, v. A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R. RICKS, defendants.	}	No. 2034.
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The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors, which,

it avers, occurred in the decision of the court herein, sustaining the separate demurrers to the indictment found herein on September 25, 1919, against A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks:

## I.

The court erred in sustaining the separate demurrers to the indictment.

## II.

The court erred in not overruling the separate demurrers to the indictment.

## III.

The court erred in holding as a matter of law that the indictment was insufficient in law.

## IV.

The court erred in its construction of section 2078 of the Revised Statutes of the United States.

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## V.

The court erred in its interpretation of said section 2078 of the Revised Statutes of the United States.

## VI.

The court erred in its decision in deciding that section 2078 of the Revised Statutes is inapplicable to transactions involving lands or other property with respect to which the Government has no interest or control and in sustaining the separate demurrers to the indictment because no such interest or control was alleged in the indictment.

## VII.

The court erred in its decision in holding and deciding that the indictment was insufficient in law because it was not alleged that the Government had an interest or control in the transactions involving lands or other property mentioned in the indictment.

## VIII.

The court erred in its decision in holding and deciding that the indictment did not charge facts sufficient to constitute an offense against the laws of the United States.

And the United States aforesaid, plaintiff in error, prays that the judgment entered herein sustaining the separate demurrers to the

indictment, for the errors aforesaid and other errors in the record and proceedings herein, may be reversed and altogether held for nothing, and that the plaintiff in error may be restored to all things that it has lost by reason of said judgment, and that the district

22 Court of the United States for the Western District of Oklahoma be directed to vacate and set aside said judgment and compel the defendants in error to plead to said indictment.

This 3rd day of January, 1921.

HERBERT M. PECK,  
*United States Attorney in and for  
the Western District of Oklahoma.*

FRANK E. RANDELL,  
*Assistant United States Attorney in and for  
the Western District of Oklahoma.  
Attorneys for Plaintiff.*

(Endorsed:) Filed Jan. 3, 1921. Arnold C. Dolde, Clerk, by M. V. Haws, deputy.

22 In the District Court of the United States for the Western District of Oklahoma.

ORDER ALLOWING WRIT OF ERROR.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN error, v. A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R. RICKS, defendants.	}	No. 2034.
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This 3rd day of January, 1921, came the United States, plaintiff in the above-entitled cause, by Herbert M. Peck, United States attorney, and Frank E. Ransdell, assistant United States attorney, and filed herein and presented to the court its petition praying for an allowance of a writ of error in said cause to be urged by it, and that a transcript of the record and proceedings and papers upon which the judgment in said cause was rendered may be sent to the Supreme Court of the United States of America, and having accompanied said petition with assignment of errors as required by law, upon consideration whereof the court does allow the writ of error.

JOHN H. COTTERAL,  
*Judge.*

(Endorsed:) Filed Jan. 3, 1921. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

- 23 In the District Court of the United States for the Western District of Oklahoma.

## PRECIPUE FOR RECORD.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN	}	No. 2034. Cr.
error,		
vs.		
A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R. Ricks, defendant, defendants in error.		

*To the clerk of the District Court of the United States for the Western District of Oklahoma:*

You will please prepare a transcript for appeal in the above-entitled cause and include therein the following, to wit: Original citation; original writ of error; indictment; separate demurrers to indictment; order, November 3, 1919, sustaining separate demurrers to indictment; motion for rehearing on demurrers; order vacating order of November 3, 1919, sustaining separate demurrers to indictment; order, December 7, 1920, sustaining separate demurrers to indictment; petition for writ of error; assignment of errors; order allowing writ of error; and all other entries, orders, and pleadings in the case, if any there are.

Respectfully submitted.

HERBERT M. PECK,  
*United States Attorney.*

FRANK E. RANDELL,  
*Assistant United States Attorney,  
Attorneys for Plaintiff.*

(Endorsed:) Filed Jan. 3, 1921. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

- 24 In the District Court of the United States for the Western District of Oklahoma.

## ELECTION AND DESIGNATION OF RECORD.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN	}	No. 2034.
error,		
v.		
A. Z. HUTTO, J. R. WHITE, RAY SEE, AND J. R. RICKS, defendants.		

In the above entitled cause the plaintiff in error, the United States of America, gives notice of its election to take and file the transcript of the record herein in the appellate court, to be printed under the supervision of its clerk and under its rules.

And the said plaintiff in error designates all of the record in said cause to be printed and included in said transcript.

HERBERT M. PECK,

*United States Attorney, Western District of Oklahoma.*

FRANK E. RANDELL,

*Assistant United States Attorney, Western District of Oklahoma.*

*Attorneys for Plaintiff.*

We hereby accept service of the above this 4th day of January, A. D. 1921, and acknowledge receipt of a copy thereof.

J. R. RICKS, *Defendant,*

By HENRY S. JOHNSTON,

*His Attorney.*

SAM K. SULLIVAN,

*Attorneys for Defendants in Error.*

(Endorsed:) Filed Jan. 4, 1921. Arnold C. Dolde, clerk, by M. V. Haws, deputy.

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## CLERK'S CERTIFICATE TO TRANSCRIPT.

UNITED STATES OF AMERICA, *Western District of Oklahoma, ss:*

I, Arnold C. Dolde, clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the attached and foregoing to be a full, true, and complete transcript of the pleadings, record, and proceedings of said court in case No. 2034, criminal, wherein The United States of America is plaintiff, and A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks are defendants, as full, true, and complete as the said transcript purports to contain and as called for by the præcipe for transcript and designation of the record above set forth.

I further certify that the original citation and the original writ of error are hereto attached and are returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of Guthrie in said district, this 13th day of January, A. D. 1921.

[SEAL.]

ARNOLD C. DOLDE,

*Clerk.*

By M. V. HAWS,

*Deputy Clerk.*

(Indorsement on cover:) File No. 28048. W. Oklahoma D. C. U. S. Term No. 691. The United States of America, plaintiff in error, vs. A. Z. Hutto, J. R. White, Ray See, and J. R. Ricks. Filed January 20th 1921. File No. 28048.

# In the Supreme Court of the United States.

OCTOBER TERM, 1920.

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THE UNITED STATES OF AMERICA, PLAINTIFF	} No.—.
in error	
v.	
A. Z. HUTTO, DEFENDANT IN ERROR.	

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THE UNITED STATES OF AMERICA, PLAINTIFF	} No.—.
in error.	
v.	
A. Z. HUTTO, J. R. WHITE, RAY SEE, AND	
J. R. Ricks, defendants in error.	

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF OKLAHOMA.

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## MOTION TO ADVANCE.

Comes now the Solicitor General and moves the court to advance these cases and set them for hearing on ~~February 28 next.~~ APR 4 next.

In each of the cases a demurrer was sustained to an indictment charging a conspiracy to violate section 2078 of the Revised Statutes, and the case is here under the Criminal Appeals Act (34 Stat., 1246). The question involved is the construction of the section of the Revised Statutes above mentioned.

Respectfully submitted.

WILLIAM L. FRIERSON,  
*Solicitor General.*

JANUARY, 1921.